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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,762	08/03/2001	Justin M. Smyers	RPC 0575 PUS	8756

7590

11/19/2002

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 11/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

BEST AVAILABLE COPY**Office Action Summary**

Applicati n No.

09/921,762

Applicant(s)

SMYERS ET AL.

Examiner

Stephen J. Castellano

Art Unit

3727

-- The MAILING DATE of this c mmunication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 25-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 25-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.

- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 9-15, 25-30 and 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Apps ('273)(Apps 1).

For claims 1, 32 and their dependents, Apps 1 discloses a stackable crate comprising a side wall formed so that at least a portion of an opening in the crate ^{at a distance from the bottom surface} has a larger dimension than the bottom surface and a drag rail (one of the rails at the bottom periphery of the crate) formed on an underside portion of the bottom surface and positioned inward of an outer peripheral support surface (outer surface of 26) of the crate, the side wall formed so that a top surface (103, 105, 110) of the side wall would contact an outer peripheral surface (107 or the bottom surface of exterior corner rib 106) of a like crate stacked thereon, note that the first mentioned outer peripheral support surface is not required to be the same as the second mentioned outer peripheral support surface. Figure 11 discloses two or more crates stacked, a portion (portion 100 of the side wall) of the inner surface of the side wall is formed to reduce the dimension of the crate opening in at least one selected area so as to provide a tighter fit with a drag rail of a crate stacked thereon.

For claim 7 and its dependents, the explanation remains the same as in the first action, paper No. 4.

Claims 7, 9-15, 30 and 32-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Apps et al. ('532) (Apps 2).

Apps 2 discloses a stackable crate comprising a side wall formed so that at least a portion of an opening in the crate has a larger dimension than the bottom surface and a drag rail (one of the rails at the bottom periphery of the crate) formed on the underside portion of the bottom surface, wherein a portion (inner edge portion of spaced reinforcing posts 79) of the inner surface of the side wall is formed to reduce the dimension of the crate opening in at least one selected area so as to provide a tighter fit with a drag rail of a crate stacked thereon.

For claims 32-34, Fig. 7 shows two crates stacked.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 25-29 and 32-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over prior art Fig. 1 and appropriate sections of the specification which describe prior art (the prior art).

The prior art discloses the invention except for the stacking of two crates. It would have been obvious to stack two crates in order to more efficiently use floor space by storing a plurality of crates in the space occupied by one crate.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Apps 1 or Apps 2.

Apps 1 and Apps 2 each disclose the invention except for the inner side wall surface being formed as a variable radius blend into the bottom surface sufficient to position a portion of the side wall over the drag rail. Rounded inside corners between the bottom surface and side wall surface are generally well known in plastic molded containers in order to alleviate stress

concentration at the bottom corner junction with the side wall. It would have been obvious to add a variable radius blend at the bottom/ side wall juncture in order to reduce stress concentration to add to the durability and strength of the crate.

Claims 31 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps 1 or Apps 2 in view of Elvin-Jensen.

Apps 1 and Apps 2 disclose the invention except for the variable radius blend. Elvin-Jensen teaches a variable radius blend between portions near the middle of a side wall where the inner side wall surface meets the bottom surface and greater radii of portions near the corners that connect side walls where the inner side wall surface meets the bottom surface. It would have been obvious to add the variable radius blend in order to make manufacturing easier since the larger radii near corner portions improve the releasability of the corner portion from male molds and these larger radii corner portions reduce the trapping of dirt and debris in these corner portions to enhance hygiene and cleanliness.

Claims 1-6, 25-29 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps 2 in view of the prior art (Fig. 1 and the specification).

Apps 2 discloses the invention except for the taper of the upper portion of the side wall where the side wall fits with the drag rail. The prior art teaches the taper of the upper portion of the side wall. It would have been obvious to taper the upper portion of the side wall in order to provide a wide fit when the very bottom portion of one crate is received by the upper portion of another crate while providing a tight fit as the upper crate is lowered into a stacked position.

Claims 34, 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art (Fig. 1 and the specification) in view of Elvin-Jensen.

The prior art discloses the invention except for the variable radius blend. Elvin-Jensen teaches a variable radius blend between portions near the middle of a side wall where the inner side wall surface meets the bottom surface and greater radii of portions near the corners that connect side walls where the inner side wall surface meets the bottom surface. It would have been obvious to add the variable radius blend in order to make manufacturing easier since the larger radii near corner portions improve the releasability of the corner portion from male molds and these larger radii corner portions reduce the trapping of dirt and debris in these corner portions to enhance hygiene and cleanliness.

Claims 1-6, 25-29 and 32-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wise.

Wise discloses the invention except for the crates being stacked. It would have been obvious to stack two crates in order to more efficiently use floor space by storing a plurality of crates in the space occupied by one crate.

Applicant's arguments with respect to claims 1-6 and 25-39 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

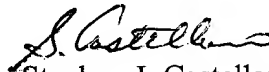
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc
November 14, 2002